Single Bench

003

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

WRIT PETITION NO. 4855 **/2004**

(Petition under article 226/227 of the Constitution of India)

PETITIONER : **Bastar Aadivasi Machhua Sahkari Samiti, Kherkheda,** Chinori, Tahsil Charama, Distt. Kanker, C.G. its registration no. AR/KNK/214, dated 4/11/89, through its president Kane Singh aged about 42 years, S/o Isha Ram R/o Kherkheda, Tahsil Charama, Distt. Bastar, C.G.

P.R. No. 4864/04
Presented by Shri M.J. Shankar
dated 13-12-04

VERSUS

RESPONDENTS :

1) State of Chhattisgarh, through the Directorate, Agriculture (Fisheries) Department, D.K.S. Bhawan, Raipur, C.G.

2) The Deputy Director, Fisheries Department Kanker, Distt. Kanker, C.G.

3) Chief Executive officer, Janpad Panchayat Charama, Tahsil Charma, Distt. Kanker, C.G.

4) President, Janpad Panchayat Charama, Tahsil Charama, Distt. Bastar, C.G.

5) Director, Panchayat (Appellate authority) State of Chhattisgarh, Raipur, C.G.

6) President, Sva Sahayata Samuh, Village Kherkheda, Tahsil Charama, Distt. Kanker, C.G.

Clerk to A. G. Bilaspur 13/12/04

13/12/04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT OF MANDAMUS/ CERTIORARI, ETC.

1. **Particulars of the petitioner** :

As stated in the cause title above.

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मामला क्रमांक ...W.P.No. 1855 / 05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8-9-2005

Shri Vishnu Koshta, counsel for the petitioner.

Shri Yashwant Singh Thakur, Govt. Advocate for the State/ respondents No.1, 2 and 5.

Shri Pankaj Shrivastava, counsel for respondent No.3.

Shri Rakesh Pandey, counsel for respondent No.6.

By this writ petition under Article 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 5-10-2004 (Annexure-P/14) passed by the Director Panchayat, respondent No.5, whereby the Director Panchayat rejected the appeal preferred by the petitioner against the order of the Collector, Kanker dated 9-10-2001, also Panchayat Resolution dated 7-7-2001 and the order dated 9-10-2001 passed by the Collector.

Brief facts leading to filing of this writ petition are that the petitioner is a registered society and the case of the petitioner is that the petitioner society has been formed for the welfare of the members of Tribal and they are engaged in fisheries activities within the area of Janpad Panchayat, Charama. On the application of the petitioner society respondents No.2 to 4 considered the application of the petitioner and given Kherkheda pond for fishing activities for a period of 10 years vide order dated 31st March 1992, and in pursuance of that the petitioner deposited lease money (Annexure-P/1).

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Thereafter, also the petitioner deposited lease money for two years and an agreement was executed by the petitioner (Annexure-P/2). However, all of a sudden, vide order dated 14-5-97 respondent No.2 informed the petitioner society that lease has been cancelled, against that the petitioner filed a civil suit in the Court of Civil Judge, Class-II, Kanker. Vide judgment dated 30th April 2001 suit of the petitioner was allowed and during the pendency of the suit, temporary injunction was granted in favour of the petitioner against respondent No.2 to 4, and it was directed not to interfere with the possession of the petitioner society. After grant of temporary injunction, the petitioner society is doing fisheries activities. When the petitioner society approached respondent No.3 for depositing the lease amount, they refused to take lease amount, therefore, the petitioner society moved an application before the Civil Court where the suit was pending, and the Court after considering application, directed the petitioner to deposit lease amount in the CCD account of the Court. Accordingly, the petitioner deposited lease amount. Receipts thereof are Annexure-P/5.

Further case of the petitioner is that respondent No.3 on expiry of the lease of the petitioner invited an application for grant of lease for fisheries activities. The petitioner society submitted applications on 1-6-2001 and 3-7-2001 and requested for grant of lease in their favour. Copy of the applications is annexure-P/7.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

However, after receiving applications, Panchayat meeting was convened on 7-7-2001 in which two applications, one of the petitioner society and another application of respondent No.6 was considered, and the petitioner's claim was rejected on the ground that the petitioner society has not deposited lease amount for a period of 3 years. When the petitioner society came to know about this fact, he approached respondent No.3 and informed about deposit of amount, but that was not considered.

Return has been filed on behalf of respondents No.3 and 6 in which respondent No.3 has mentioned that on account of non-deposit of lease amount of the previous lease by the petitioner, the petitioner being defaulter, the petitioner's claim was rejected and the petitioner has an alternative remedy to file a revision before the State Government and he has not availed alternative remedy, therefore, the petition is liable to be dismissed.

I have heard learned counsel for the parties.

Perusal of the resolution dated 7-7-2001 (Annexure-P/9) whereby the petitioner's application was rejected by Janpad Panchayat shows that application of the petitioner was not considered on account of the fact that he has not deposited lease amount of the previous lease for a period of 3 years, whereas, as per para-5.4 of the petition, the petitioner's case is that he has deposited lease amount in the civil Court and respondent No.3 refused to accept the amount,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

~~and Xerox copies of the deposit receipt are Annexure-P/5. Perusal~~ of Annexure-P/5 shows that lease amount from 1997-98 to 2000-01 was deposited before the Civil Judge where the civil suit filed by the petitioner against respondents was pending.

It is admitted position that earlier lease of the petitioner was cancelled by respondents. The petitioner filed a civil suit No.38-A/97 before the Civil Judge, Class-2, Kanker, in which temporary injunction was granted in favour of the petitioner and on account of that the petitioner was continuing in possession of the tank in question for fisheries activities. Ultimately, the said suit was decreed vide judgment dated 30th April 2001.

Further perusal of Annexure-P/5, which is Xerox copy of the receipt of amount deposited by the petitioner in the CCD account shows that lease amount, which commenced from the period 1997-98 up to 2000-01 was deposited. Respondents were party in that suit and the said amount is said to be deposited after taking permission from the Court.

Therefore, in the circumstances, resolution of the Janpad Panchayat dated 7-7-2001 in which it has been mentioned that the petitioner has not deposited lease amount was incorrect, as such application of the petitioner for grant of lease for fishing right in KherKheda pond was rejected on irrelevant and non-existent ground.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Now, coming to the question of alternative remedy available to the petitioner, the petitioner in the first instance preferred appeals before the Deputy Director and the Director, and those appeals were rejected, and ultimately, the petitioner approached this Court under the writ jurisdiction. The objection raised by respondents is without any force for the reason that:

(1) the application of the petitioner was rejected on irrelevant and non-existent ground,

(2) revisional jurisdiction is limited which is vested with the Government.

Therefore, it cannot be said that efficacious alternative remedy was available to the petitioner. The petitioner had already utilized right of appeal and in that he remained unsuccessful. Even otherwise, right of alternative remedy is the rule of discretion and not of law, therefore, on these grounds objection raised by respondents has no force.

In the result, the petition of the petitioner deserves to be allowed and the same is allowed. The impugned orders passed by the Director Panchayat, Deputy Director and resolution of Janpad Panchayat are quashed. Respondents are directed to consider the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	application of the petitioner afresh and take decision in accordance with law. In view of this order, M.(W.)P. No.623/2005 stands disposed of. Parties are entitled for certified copy of this order. Sd/- L.C.BHADOO Judge	

SD/FS/2005 - 20,000

12.9.05 13.9.05